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WITH PRONUNCIATIONS

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presumptive. Founded upon or resting upon a presumption.

presumptive damages. Another term for punitive or exemplary damages. 22 Am J2d Dam § 236.

presumptive evidence. A term of variable meaning. Evidence to be considered as proof of a point unless rebutted. Circumstantial evidence; that is, evidence which shows the existence of one fact by proof of the existence of others from which the first may be inferred. *State v Kornstett*, 62 Kan 221, 61 P 805. Evidence which is not conclusive but subject to rebuttal or explanation.

presumptive heir. See *heir presumptive*.

presumptive title. A title appearing from nothing more than occupancy of the premises. The naked possession of a disseisor. 3 Am J2d Adv P § 236.

presumptive trust. Same as *resulting trust*.

pretended (prē'tenst). Pretended.

pretended. Sham; fictitious; make-believe.

Pretended Title Statute (ti'tl stat'ūt). The statute 32 Henry VIII., c. 9, providing that no one shall sell or purchase any pretended right or title to land unless the vendor has received the profits thereof for one whole year before such grant, or has been in actual possession of the land, or of the reversion or remainder, on pain that both purchaser and vendor shall each forfeit the value of the land to the king and the prosecutor. See 4 Bl Comm 135.

pretense. See *false pretense*; *pretext*.

pretensed (prē'tenst'). Pretended.

preterition (prēt-g-rish'qn). (Civil law.) The failure of a testator to make some provision in his will for an heir who would be entitled to succeed to his estate or some portion of it in the absence of a will.

pretermisison (prē-tēr-mish'qn). The act of pretermittting. The condition of being pretermitted.

See *pretermitt*.

pretermitt (prē-tēr-mit'). To fail to take note of a person. To omit a person, particularly one's child from one's will. 57 Am J1st Wills § 573.

pretermitted child. See *pretermitted heir*.

pretermitted heir. One who as a child or descendant of another would have shared in the estate of the latter if the latter had died intestate but who is not named in or provided for by the will left by such ancestor.

As to statutes respecting right of pretermitted children, see 57 Am J1st Wills § 573.

pretext (prē'tekst). An ostensible reason or motive assigned or assumed as a color or cover for the real reason or motive; false appearance; pretense. *State v Ball*, 27 Neb 601, 604.

pretium (prē'shi-um). Price; value; reward; pay.

pretium affectionis (prē'shi-um a-fek-shi-ō'nis). The price or value of affection.

The term is applied to that rule for the estimation of damages for the loss of things having peculiar personal value to the owner, such as a family portrait or a pleasure yacht wherein the measure of damages is the actual value to the owner, taking into account its cost, the practicability and expense

or fee. See 4 Bl Comm 96.

pretium periculi (prē'she-um pe-rī ku-lī). The price of peril or risk; the compensation paid or the charge made for assuming a marine insurance hazard.

Pretium succedit in locum rei (prē'she-um suk-sē'dit in lō'kum re'i). The price or value of a thing takes the place of it.

pretor (prē'tor). Same as *praetor*.

pretorian prefect (prē-tor'i-an prē'fekt). See *praefectus praetorio*.

pretorium (prē-tō'ri-um). The official residence of a Roman praetor; a court room.

pretrial conference calendar. A court calendar, in addition to the trial calendar, listing the cases wherein a pretrial conference has been called and the time therefor. *Union Oil Co. v Hanes*, 27 Cal App 2d 106, 80 P2d 516; *State ex rel. Kennedy v District Court*, 121 Mont 320, 194 P2d 256, 2 ALR2d 1050.

pretrial deposition. See *deposition*.

pretrial discovery. See *discovery*.

pretrial procedure. Provision made by statute or rule of court for a conference between court and counsel to consider simplification of the issues, the necessity or desirability of amendment of the pleadings, the possibility of obtaining admissions to avoid unnecessary proof, limitation on the number of expert witnesses, a preliminary reference, and such other matters as may aid in the disposition of the action. 53 Am J1st Trial § 11. An informal proceeding before an administrative agency for the submission and consideration of facts, arguments, offers of settlement, and proposals of adjustment. 5 USC § 1004 (d).

See *deposition*; *discovery*.

prevailing party. The party who is successful or partially successful in an action, so as to be entitled to costs. 20 Am J2d Costs §§ 14, 15.

To be a prevailing party does not depend upon the degree of success at different stages of the suit; but upon whether at the end of the suit or other proceeding, the party, who has made a claim against the other, has successfully maintained it. If he has, he is the prevailing party. *Bangor & Piscataquis Railroad Co. v Chamberlain*, 60 Me 285, 286.

prevailing party on appeal. The party who obtains a reversal or a modification of judgment substantially favorable to him. 5 Am J2d A & E § 1015.

In eminent domain proceedings instituted by the state wherein an appeal is taken to the District Court from an award of the commissioners, the "prevailing party", entitled by statute to an award of costs and disbursements, is the litigant who prevails with respect to the particular issues raised and determined by the appeal, rather than the litigant who ultimately prevails in the condemnation proceeding. *State v Miller Home Development*, 243 Minn 1, 65 NW2d 900, 50 ALR2d 1377.

prevailing rate of wages. The wages received generally by those who are working at the same trade or occupation. *People ex rel. Rolf v Coler*, 58 App Div 347, 68 NYS 1101. The average, rather than the highest or lowest, wages paid for a legal day's work